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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
1875.0700004

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Application Number	Filed
09/881,734	June 18, 2001

First Named Inventor
A. Scott HOLLUMS

Art Unit	Examiner
2665	Phan, Man U.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [ ] attorney or agent of record. Registration number _____.
- [X] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 43,610

Signature

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Telephone number

March 14, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

[X] *Total of one (1) forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Confirmation No.: 8770
HOLLUMS *et al.*	Art Unit: 2665
Appl. No.: 09/881,734	Examiner: Phan, Man U.
Filed: June 18, 2001	Atty. Docket: 1875.0700004
For: **System, Method, and Computer Program Product for Scheduling Burst Profile Changes Based on Minislot Count**	

Arguments to Accompany the Pre-Appeal Brief Request for Review

Mail Stop: AF

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant hereby submits the following Arguments, in five (5) or less total pages, as attachment to the Pre-Appeal Brief Request for Review Form (PTO/SB/33). A Notice of Appeal is concurrently filed.

Arguments

Applicant's arguments in the Amendment and Reply under 37 C.F.R. § 1.111, filed in response to the Office Action issued April 26, 2005, were not properly considered or responded to by the Examiner in the final Office Action issued December 15, 2005 ("Office Action"). In particular, the Examiner's response was legally and factually deficient because the Examiner failed to adequately show where any of the cited references teach or suggest (1) storing parameters in a serial interface in advance of sending them to a physical layer device, (2) storing a predetermined changeover time in the serial interface, and (3) sending the parameters to the physical layer device at the changeover time, as recited by each of the independent claims.

For a rejection to be legally adequate under 35 U.S.C. § 103, every claim limitation must similarly be taught, or be obvious to person of ordinary skill in the art, in the combination of the references. *See Orthopedic Equipment, Inc. v. United States*, 702 F.2d 1005, 1013 (Fed. Cir. 1983).

Claims 1 and 8 are the independent claims in this application. Independent claim 1 recites a system for changing one or more physical layer communications parameters as configured in a physical layer device, the system including a serial interface that "stores the parameters in advance of sending the parameters to the physical layer device, stores a predetermined changeover time, and sends the parameters to the physical layer device at the predetermined changeover time". Independent claim 8 recites a method of changing one or more physical layer communications parameters in a physical layer device, the method including the steps of "(b) storing the parameters in a serial interface; (c) receiving a point in time at which the parameters are to changeover; (d) storing the changeover point in the serial interface; and (e) at the changeover point, writing the parameters to the physical layer device".

The Examiner rejected claims 1-15 under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2002/0064155 to Yen et al. ("Yen") in view of U.S. Patent No. 6,714,589 to Cole ("Cole"). In rejecting these claims, the Examiner has asserted that Yen and Cole in combination teach the features recited in independent claims 1 and 8 of storing physical layer communication parameters in a serial interface, storing a predetermined changeover time in the serial interface, and sending the parameters to a physical layer device at the changeover time. However, as will be explained below, Yen and Cole, individually or in combination, fail to teach or suggest these features, and thus

the Examiner's continued rejections based on 35 U.S.C. § 103(a) are legally and factually deficient.

1. Yen and Cole do not Teach or Suggest Storing Parameters in Advance of Sending the Parameters to a Physical Layer Device

Yen teaches a PHY apparatus 20 that includes a memory 22 that stores a specific warning data which warns a connected MAC device 30 about a change, if any, of the transmission configuration of the PHY apparatus 20. *See* Yen at paragraph [0018]. In particular, Yen teaches that PHY apparatus 20 detects a change in external transmission configuration data, updates a transmission configuration in a register set 24 of PHY apparatus 20 to the new external transmission configuration, followed by transferring warning data 40 from memory 22 to MAC device 30. After a driver 51 connected to MAC device 30 checks warning data 40, driver 51 retrieves the data stored in register set 24 of PHY apparatus 20. *See* Yen at paragraphs [0023]-[0024] and FIG. 6. Thus, Yen sends warning data (stored in memory 22) and configuration data (stored in register set 24) from PHY apparatus 20 to MAC device 30 which is the inverse of sending parameters to a physical layer device as recited by each of the independent claims. Thus, Yen does not teach or suggest storing physical layer communication parameters in advance of sending them to a physical layer device as recited in independent claims 1 and 8.

Cole fails to provide the teaching missing from Yen. Cole describes a handshaking protocol that includes sending a primitive synchronization signal from a modem 15 to a modem 20. Upon receipt of the primitive synchronization signal, the modem 20 internally implements operating parameter changes. *See* Cole at column 6, lines 19-67. Thus, Cole simply teaches sending a primitive synchronization signal, and

not physical layer communication parameters, from modem 15 to modem 20 wherein modem 20 internally implements operating parameter changes upon receipt of the primitive synchronization signal.

2. Yen and Cole do not Teach or Suggest Storing a Changeover Time

As described above, in Yen, memory 22 stores a specific warning data which warns the MAC device 30 about a change, if any, of the transmission configuration of the PHY apparatus 20. Register set 24 of PHY apparatus 20 stores the new external transmission configuration upon a change in external configuration data. Thus the only storage units (memory 22 and register set 24) described in Yen do not store a predetermined changeover time. Furthermore, in Yen, the PHY apparatus 20 updates its own configuration only when a change in external transmission configuration is detected and not in accordance with a stored predetermined changeover time.

In Cole, the modification of operating parameters in modem 20 occurs only upon receiving a primitive synchronization signal from modem 15 and not at a predetermined changeover time. In particular, Cole states that "[u]pon receipt of the primitive synchronization signal, the modem 20 implements the operating parameter change." *See* Cole at col. 6, lines 66-67. Since Cole describes changing operating parameters in modem 20 only upon the detection of the primitive synchronization signal (the timing of which is arbitrary), it does not teach or suggest storing "a predetermined changeover time" as recited in each of the independent claims.

3. Yen and Cole do not Teach or Suggest Sending Parameters to a Physical Layer Device at a Predetermined Changeover Time

On page 5 of the Office Action, the Examiner concedes that "Yen et al. does not disclose expressly the step of sending the parameters to the physical layer device at a

predetermined time". Cole also does not teach or suggest this feature. Firstly, since modem 20 in Cole internally changes parameters upon receipt of a primitive synchronization signal from modem 15 there is no sending of parameters from modem 15 to modem 20. Secondly, since modem 20 implements operating parameter changes only upon receipt of a primitive synchronization signal from modem 15, there is clearly no use of a predetermined changeover time in Cole. Thus Cole clearly does not teach or suggest "send[ing] the parameters to the physical layer device at the predetermined changeover time" as recited in independent claim 1 or "at the changeover point, writing the parameters to the physical layer device" as recited in independent claim 8.

4. Conclusion

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a) over Yen in view of Cole.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

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